

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE Pet Foods Products : Civil Action No. 07-2867 (NLH)
 Liability Litigation :
 : MDL DOCKET NO. 1850
 :
 : **ORDER**
 :
 : **ALL CASES**

 This matter having been brought before the Court by defendants' "Motion for Issuance of Order to Show Cause for an Order Allowing for the Destruction of Recalled Wheat Gluten, Recalled Rice Protein Concentrate and Other Ingredients Allegedly Containing Melamine Being Stored by Defendants in the Possession of Such Ingredients" [317]; and

 Defendants representing that these stored ingredients should be destroyed because (1) they have been deemed a public health hazard by the United States Food and Drug Administration, and the FDA has repeatedly requested the destruction of such ingredients, (2) the FDA has conducted its own independent and reliable sampling and testing of these recalled ingredients, (3) the financial costs of storing these ingredients has been borne completely by defendants and these costs exceed any benefit to plaintiffs, and (4) adequate representative samples of finished recalled product, rather than individual ingredients, are, and will continue to be, stored; and

 Plaintiffs having objected to defendants' motion, arguing that (1) defendants' request is premature due to the pending appeal of the class certification order, (2) the destruction of

the stored ingredients does not comport with the court-approved sampling plan, and (3) the FDA's testing and sampling has not been vetted for reliability; and

The Court finding that good cause has been shown as to the need to destroy the stored ingredients for the safety and welfare of the general public; but

The Court also finding that plaintiffs have a legitimate interest in the preservation of such evidence;

Accordingly,

IT IS HEREBY on this 17th day of June, 2009

ORDERED that defendants' "Motion for Issuance of Order to Show Cause for an Order Allowing for the Destruction of Recalled Wheat Gluten, Recalled Rice Protein Concentrate and Other Ingredients Allegedly Containing Melamine Being Stored by Defendants in the Possession of Such Ingredients" [317] is **GRANTED**; and it is further

ORDERED that **THIS ORDER SHALL BE STAYED FOR 90 DAYS OR PENDING FURTHER ORDER OF THE COURT**; and it is further

ORDERED that within 30 days of this order plaintiffs, by letter to the court and the parties, shall propose for the items that are the subject of this order any specific testing procedure or procedures they wish to undertake prior to the destruction of the materials; and it is further

ORDERED that within 60 days of this order defendants shall

make the stored materials available for the testing procedure or procedures requested by plaintiffs; and it is further

ORDERED that Plaintiffs may undertake and assume the cost of such procedures themselves or file within 30 days of this order a letter brief no longer than 3 pages long why such cost should be borne, either wholly or in part, by defendants. Any response shall be filed no later than 10 days thereafter.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.